IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 105 OF 1994

Messrs. Shushanku Builders
Pvt. Ltd. ..Appellants

versus

Municipal Corporation of
Greater Bombay ..Respondents

Mr. M. K. Nesari for the Appellants.
None for the Respondents.

CORAM : D. G. DESHPANDE,J.

DATE : 19TH JANUARY,2005

ORAL ORDER :

1. Heard learned counsel for the Appellants. The matter was on board last before me when it was adjourned and the appellants were directed to give notice to the other side. Accordingly he has given notice to the other side - Municipal Corporation of Greater Bombay. Nobody is present for the Municipal Corporation of Greater Mumbai - Respondents.

2. A short question is involved in this matter i.e. the appellants were served with a notice under Section 53(1) of the Maharashtra Regional and Town

Planning Act, 1966. This notice was issued by the Ward Officer, the appellants therefore filed a Civil Suit before the City Civil Court. In that the Municipal Corporation of Greater Mumbai raised a preliminary objection that the suit was not maintainable for want of notice to the Municipal Corporation of Greater Mumbai under Section 527 of the BMC ACt. The matter was decided by the court on 17.1.1994 against the plaintiff and the suit came to be rejected under Order VII Rule 11 of the Code of Civil Procedure.

3. Only one contention was made by the counsel for the appellants i.e. that this order of preliminary objection came to be passed when the plaintiffs and their Advocate were absent. He only contended that looking to the nature of the issue involved the matter requires to be remanded for enabling the plaintiffs to make its submissions on the preliminary issue . It is true that the order was passed in 1994 and the stay is operating in favour of the appellants for last 10 years, however, looking to the issue involved the impugned order of rejection of plaint and dismissal of notice of motion No. 6122 of 1992 is set aside. The matter is remanded back to the lower court for deciding afresh issue after hearing both the sides. Parties to be heard and issue to be decided within three

months from the date of receipt of the order and stay is continued for a period of three months and fifteen days after passing of the said order. Office to communicate this order immediately. Appeal disposed of accordingly.

19.1.2005 (D.G. DESHPANDE, J.)